IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 529 of 2007

WITH

APPEAL FROM ORDER NO.(St)5991 OF 2007

Smt.Manda Maininath Palwankar ..Applicant

V/s

Parshuram Sahadeo Gawade and Anr.... Respondent

Shri Rahul Kadam i/b Uday Warunjikar for the applicant

Shri P.S.Madkaikar for Respondent no.1

CORAM:S.R.SATHE,J.

DATED:9th Oct. 2007

P.C.:-

1. Delay condonation application and A.O. heard simultaneously.

2. Present Appellant-applicant is original defendant no.2 in LC Suit No.1549 of 2001. The said suit is filed by one Parshuram Gawade against MHADA and present applicant appellant wherein he has challenged the order of allotment of the suit property in the name of the defendant no.2 and prayed for declaration and injunction. Admittedly though sufficient opportunity

was given to the defendant i.e. present appellant she failed to file written statement. It is after a period of about 4 years i.e. in 2005 the present applicant took out Notice of Motion No.4121 of 2005 and prayed for setting aside "No W.S.". The same was rejected on 29-1-2005. Hence she filed the present A.O. However, admittedly there is a delay of 1 year and 78 days in filing the present AO.

3. The applicant has averred in the application for delay condonation that she was not properly advised in the matter. Even her Advocate kept her in dark. Though she signed the affidavit she was not knowing contents of the same. She was not having any independent source of income. Hence she prayed that delay be condoned.

4. The application is strongly opposed by the other side. The bear reading of the application indicates that it is too vague. The applicant has not at all explained the delay, leave aside the satisfactory explanation for delay. It does appear that the applicant has in fact not given any satisfactory explanation for delay. Though she has tried to blame her Advocate, she has not also filed any affidavit of the Advocate or produced any cogent evidence to show that she used to make query with the Advocate but she was kept in dark. There is no explanation as to why she did not file W.S. though sufficient opportunity

was given to her.

5. Having regard to the fact that the applicant is a widow and claiming right in respect of immovable property, with a view to have the decision of the suit on merits it was suggested to the Respondent that he may agree to condone the delay subject to cost. The learned Advocate for the Respondent submitted that if delay is condoned then atleast cost of Rs.5,000/- be awarded.

6. Considering all the aspects, in the interest of justice the delay is condoned and the applicant original defendant no.2 is allowed to file written statement. However, defendant no.2 i.e. present applicant is directed to pay cost of Rs.5,000/- to the original plaintiff. Cost to be paid within one month from today. Payment of cost is a condition precedent for further defence of the suit.

7. A.O. as well C.A. disposed of in above terms.

8. Parties to act on authenticated copy of this order.

(S.R.SATHE,J.)